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THE REVISION OF STATUTE LAW

BY MR. M. S. DUDGEON

Madison, Wis.

Great uncertainty as to the meaning of statutes often results because the most ordinary canons of English composition have been ignored. Intent on expressing the legislative thought in that language which we call legal, the draftsman often makes the law unintelligible to laymen.

It is important of course that the statute law be so expressed that the courts and those learned in the law may know its meaning. Yet that trial courts and lawyers do not always know the meaning of statutes is evidenced by the fact that the appellate courts are so constantly called upon to construe them. In the last volume of the Wisconsin supreme court reports, representing three months output and containing about one hundred cases, the court found it necessary to construe for the lower court or otherwise refer to, one hundred and twenty-six different sections of the revised statutes and twenty-nine chapters of the session laws. If lawyers and judges are puzzled over the meaning of these statutes it is no wonder that laymen are often at fault.

No legal maxim is so often invoked as that expressing the principle that "ignorance of the law excuses no one." The application of the principle is of course absolutely essential to the integrity of government. Yet, to enact a law the meaning of which it takes lawyers and courts months to determine, and then to visit a penalty on an innocent and ignorant layman who cannot promptly grasp its intricate significance, works an evident injustice. The principle contained in this maxim may furnish a suggestion to the reviser who strives for better expression. It may be said that a reviser's office is in part so to revise the statutes that there will be *in fact* no excuse for an ignorance of meaning which cannot be excused in law. The thought then which I have in mind and which at this time and in this time I can only suggest is the thought that the statutes should be revised so as first of all to make clear what the meaning of the law actually is—make clear

not only to the trained intellects of the bench and bar but make clear to him who runs. This is often as much a matter of good composition and rhetoric as it is a matter of technical or legal knowledge. If all rules of good English are ignored in drafting laws the result is not of course satisfactory.

Breaking a statute up into short sections, short paragraphs and short sentences often adds clearness to a law. I have in mind one section of the Wisconsin statutes which covers nearly four printed pages, contains ten sentences, some of them of course very long, and is in one undivided paragraph. It provides a complete procedure for laying out drains in country towns and includes details for appeals, rehearing, etc. The section covers twenty-three distinct steps to be taken in the proceeding before the town board. It is to be noted that the section is addressed in particular to the members of town boards of country towns—always laymen and often altogether unlettered. In such a case the mere mechanical separation of the section into shorter sentences and into paragraphs, each paragraph describing a distinct step or stage in the proceeding, and each paragraph complete in itself, would render the section intelligible. Such a change would make it possible for a member of the town board to understand clearly as he takes it each step prescribed by this section.

Then too some statutes are drawn with technical phraseology, repetitions and circumlocutions that remind one of old English conveyances of real estate. There is no more occasion for the employment of such literary style in law drafting than there is in essay writing or short story writing. What is needed in all cases is a clear idea clearly and simply expressed. What I have in mind will be understood by referring to Lord Macaulay's Indian code. Here the eminent historian and essayist made use of his command of the English language and stated legal principles in the same sort of English that he employed in stating historical facts—though his legal style is possibly more simple and direct than his historical style.

The use of exact general terms rather than a tedious enumeration of almost innumerable particulars aids in securing clearness and gives added force. In providing a penalty for burglary by a person armed with a dangerous weapon it is better to use the phrase "dangerous weapon" than to attempt to enumerate the specific weapons which the draftsman may at the moment consider dangerous. Any effort so to enumerate, however thorough, will not only render the statute long and cumbersome but will necessarily result in the omission of

some weapons that may be used. No man's imagination is lively enough to conjure up the name of every weapon which some Raffles may at some time employ. But even a veritable Raffles would be puzzled to select an instrument that was in fact dangerous to life but yet would not be well within the meaning of the simple phrase "a dangerous weapon." In this way there is secured along with clearness a certain elasticity that is an essential element in a statute.

The force of this suggestion may be appreciated by an examination of the Federal Constitution. This document is most evidently in general terms yet to an ordinary man it is clear in meaning notwithstanding some of the efforts of the courts. Innumerable disasters might have resulted had an effort been made to particularize rather than to generalize. For example the fourteenth amendment adopted at the close of the Civil War sought to protect a certain class of humble citizens in a certain section of the country by a provision that no State shall "deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." Nothing could have been farther from the mind of the draftsman than that he was formulating a provision which within a third of a century would be invoked to protect great railroad corporations from excessively low rates. He certainly had no thought that the courts would hold that for a legislature or a commission to prescribe rates which did not furnish some profits would be equivalent to depriving the railroad company of its "property without due process of law." Yet the simple language used accurately voiced an elemental American principle of justice which has protected alike the despised and humble negro and the no less despised though possibly less humble railroad corporation.

The ideal statute is a clear statement of a rule or principle couched in such general language as will cover and control every particular case that may come within the spirit of the principle.